

LEASE BETWEEN RALEIGH PORTFOLIO JH RETAIL, LLC AND CITY OF
DURHAM FOR SPACE AT 2945 S. MIAMI BOULEVARD; DURHAM, NC

This Lease is dated, made, and entered into as of the ____ day of _____, 2012 between Raleigh Portfolio JH Retail, LLC ("Landlord") and the City of Durham ("Tenant"). Landlord is a Limited Liability Company organized and existing under the laws of North Carolina.

1. VARIABLES. Certain provisions of this Section 1 shall supersede and replace provisions elsewhere in the Lease. In the event of a conflict in this Section 1 and any other provision in the Lease, this Section shall govern and control.

(a) Premises: The Premises consist of approximately 8,348 rentable square feet of space known as Suites 133, 134, 135, and 136 located in a building at 2945 S. Miami Boulevard Durham, North Carolina 27703 within the Presidential Park West in the County of Durham (collectively the "Property") and described as Parcel Number 157312. In addition to the Premises, the Tenant has the exclusive use of 35 Parking Spaces as identified and shown on the Parking Plan Exhibit to the Scope of Work referenced below.

(a1) Premises Upfit: The Premises will be upfitted by the Landlord in accordance with the following: Exhibit A titled "Scope of Work to be completed by Landlord for the District 4 Police Substation at 2945 S. Miami Boulevard, Suites 133- 136" consisting of 13 pages. The Landlord will secure necessary architectural plans and obtain appropriate permits, as required. For a period of one year from the Date of Commencement the Landlord warrants that the work performed under this lease will be of good quality and free from defects and will conform to requirements of the final approved construction documents. The Landlord's contractor shall perform the work in such a manner so as to preserve all manufacturers' warranties relating to materials and labor used in the work.

Section 6 (COMMON AREAS) XXX applies ____ does not apply. The Common Area is described as follows (and is further described in Section 6): If "does not apply" is checked, then Section 6 and references to Common Areas in this Lease shall be of no force or effect.

(b) Term: six years from Date of Commencement. The Date of Commencement shall be the date that all of the following are completed:

- 1) The work to be performed by the Landlord's General Contractor in accordance with the attached Scope of Work identified as Exhibit A and all attachments thereto (excluding items of work and adjustment of equipment and fixtures that can be completed after the Premises are occupied without causing material interference with Tenant's use of the Premises – "Punchlist"). The following applies in implementing this section: Some of the work to be performed as stated on Exhibit A may be vague or written in a general way, because the final drawings and specifications have not yet been prepared as of the time of the execution of this lease. The Landlord will obtain the final drawings and specifications adequate for

the performance of the work as envisioned by Exhibit A. The City's approval of the final construction documents is required before the Landlord submits the final construction documents for construction permitting. The Landlord understands that the Tenant has agreed to the rent amounts listed in Section 1(c) based upon representations from the Landlord that the Landlord will complete the work as described in Exhibit A and all attachments thereto, for an amount not to exceed \$279,857.80.

- 2) Landlord delivers to Tenant a certificate signed by its Architect or General Contractor stating the Premises are in compliance with applicable provisions of the ADA (the Americans with Disabilities Act) and its regulations.
- 3) Landlord delivers possession of the Premises to Tenant in accordance with this lease; and
- 4) Landlord has received a Certificate of Compliance from the Durham City-County Department of Inspections for the Premises allowing reasonable occupancy of the Premises.

(b1) If the Date of Commencement is the first day of a month, the initial term shall be six years ending at 11:59PM on the day before the anniversary of the Date of Commencement. If the Date of Commencement is on a day that is not the first day of a month, the portion of the month beginning with the Date of Commencement and continuing until the end of that month is the "Short Month". The term will be the Short month and the following six years.

(b2) It is agreed by the parties that the upfit duration is one hundred twenty-five (125) calendar days from the notice to proceed with specific durations as follows: Landlord shall complete construction drawings within 30 days of Notice to Proceed; Tenant shall review and approve drawings within 5 days of receipt; drawings shall be deemed approved if not responded to within 5 days; Landlord shall have 90 days for permitting and construction. If the items set forth in (b) (1), (2), (3), and (4) are not completed within one hundred thirty-five (135) calendar days of the Notice to Proceed, the Tenant shall have the option to terminate this lease by giving Landlord notice of its intention to terminate. After that notice is given, Landlord shall have forty-five (45) days to complete those items. If the Landlord fails to complete the items within that forty-five (45) day period, the lease shall terminate.

(c) Rent: During the first year of this lease, Tenant shall pay base rent to Landlord in the amount of \$10.69 per square foot of rentable space per year. Base rent during the second through sixth year of the lease term shall increase by three percent (3%) over the previous year's rental rate. All rents mentioned above shall be paid in equal monthly installments. The payment for the Short Month, if any, shall be prorated.

(d) Upfit Cost: In consideration of the upfit to be performed by Landlord per Section 1(a1) of this lease and detailed in Exhibit A, Tenant shall pay to Landlord \$5,184.60 in monthly installments during each month of the six year term of this lease, not including the Short Month, and such payment shall be due on the first day of the month. The Tenant has established a lease upfit contingency to cover matters that may result from Tenant requested change orders necessary for the upfit. The Landlord shall notify and request in writing to the Tenant any amount from the lease upfit contingency necessary to complete any such change orders requested. Within three (3) business days of Landlord's notification, Tenant shall deny or approve in

writing the Landlord's request for use of the lease upfit contingency and if Tenant fails to respond within three (3) business days the request shall be deemed denied. The Landlord's Contractor shall not proceed with any change order work without written authorization from the Tenant. Any approved lease contingency upfit funding shall be paid to the Landlord in a lump sum payment within 30 days of the Date of Commencement as defined in Section 1(b)(1) of this lease.

- (e) **TICAM Charge:** Tenant shall pay to Landlord a monthly amount for Taxes, Insurance, and Common Area Maintenance (TICAM) as Tenant's proportionate share of the actual cost for operation and maintenance of the Property. Tenant's TICAM charge for the first calendar year shall be \$2.96 per square foot of rentable space. Tenant shall make payment to Landlord on the first day of each month, in an amount equal to one-twelfth of Tenant's proportional share of the TICAM. TICAM shall be prorated for any Short Month. Tenant's charge for the portion of TICAM allotted to actual Taxes and Insurance for the second and each subsequent year shall increase or decrease annually by the actual amount of those charges incurred by Landlord. Landlord shall provide Tenant with the estimated TICAM for each calendar year within ninety (90) of the beginning of a new calendar year. Landlord shall not charge Tenant for any Common Area Maintenance charges that exceed eight percent (8%) over the preceding year. Within one hundred twenty (120) days following the end of each calendar year, Landlord shall furnish Tenant a statement showing the total actual TICAM charges for the year just expired, the amount of Tenant's proportionate share of TICAM, and TICAM payments made by Tenant during such calendar year. If the actual TICAM charges for such calendar year exceed the aggregate of Tenant's monthly payments made during the calendar year, Tenant shall pay to Landlord the deficiency with thirty (30) days after receipt of said statement. If Tenant's TICAM payments exceed the actual TICAM charges, Tenant shall be entitled to offset the excess against future TICAM payments. On the Date of Commencement, Tenant's proportionate share shall be 10.74%.
- (f) **HVAC Maintenance:** Landlord will replace or clean the HVAC air filters to maintain the HVAC system and maintain a Maintenance Contract with a licensed mechanical contractor to provide for regular quarterly care of said system. In consideration thereof, Tenant shall pay to Landlord \$73.33 in monthly installments during each month of the term of this lease, such payments due on the first day of each month. In the event that the HVAC system is no longer operable, Landlord shall not be responsible for the replacement of such system unless replacement is a result of the negligence or willful misconduct of Landlord, its employees or agent.
- (g) **Custodial Services:** Tenant shall pay to Landlord \$1,290.00 in monthly installments during each month of the term of this lease for custodial services to be provided by Landlord in accordance with Exhibit B, titled "Scope of Work for Custodial Services at Police District Four", consisting of seven pages, due and payable on the first day of each month..

(h) Monthly Rent, Upfit Cost, HVAC Maintenance, and Custodial Payment Table

Year	Rent	Upfit	TICAM	HVAC	Custodial
Year 1	\$7,436.68	\$5,184.60	\$2,059.17	\$73.33	\$1,290.00
Year 2	\$7,659.78	\$5,184.60	TBD	\$73.33	\$1,290.00
Year 3	\$7,889.57	\$5,184.60	TBD	\$73.33	\$1,290.00
Year 4	\$8,126.26	\$5,184.60	TBD	\$73.33	\$1,290.00
Year 5	\$8,370.05	\$5,184.60	TBD	\$73.33	\$1,290.00
Year 6	\$8,621.15	\$5,184.60	TBD	\$73.33	\$1,290.00
Extension Year 1	\$8,879.78	N/A	TBD	\$73.33	\$1,290.00
Extension Year 2	\$9,146.17	N/A	TBD	\$73.33	\$1,290.00
Extension Year 3	\$9,420.56	N/A	TBD	\$73.33	\$1,290.00
Extension Year 4	\$9,703.18	N/A	TBD	\$73.33	\$1,290.00

- (i) Extension of Lease Term: Tenant has two successive options to extend the Term by two years. Tenant may extend the Term for one or two additional two year Terms by sending notice to Landlord at least 90 days before the expiration of the then-existing Term. The provisions of this Lease shall remain in effect for the extended Term except to the extent stated otherwise in this Lease. The base rent rate during each extension period shall increase 3% of the preceding year's base rent rate.

- (j) Payee for Rent Payments:
Raleigh Portfolio JH Retail LLC
2700 Sumner Boulevard Suite 178
Raleigh, NC 27616

- (k) Addresses:

Address, and telephone and fax numbers of Landlord:
2700 Sumner Boulevard Suite 178
Raleigh, NC 27616
Phone: 919-872-9000
Fax: 919-876-7215

Address and telephone and fax numbers of Tenant:

General Services Department – Real Estate Division
City of Durham
101 City Hall Plaza
Durham NC 27701
Telephone: (919) 560-4197
Fax: (919) 560-4196

- (l) Exterior Grounds Maintenance – Landlord shall be responsible for all exterior maintenance and cleaning of grounds, including maintenance of all landscaping and

shrubbery and any such costs shall be charged to Tenant as Common Area Maintenance in accordance with Section (1)(e).

- (m) Taxes - Real property taxes assessed on the Premises shall be paid by Landlord and shall be charged to Tenant in accordance with Section (1)(e).
- (n) Consent to Utility Contractors – Upon request, Landlord shall provide consent for utility contractors to install fiber optic or other devices, in a reasonable location as determined by Landlord, required for internet connectivity to the Premises for Tenant's use.
- (o) Holdover - If the parties fail otherwise to agree in writing respecting a holdover tenancy after the expiration of the lease term and all extensions thereto, this section shall apply. Acceptance of base rental payment by the Landlord without such agreement shall create a lease on the same terms and conditions as this Lease except that the term shall be month-to-month. During the month-to-month tenancy, Section 1(g) will not apply. Either party may terminate the month-to-month tenancy by sending sixty (60) days notice to the other party.
- (p) Fire Extinguishers – During the term of the lease, Landlord shall provide and maintain fire extinguishers in accordance with all applicable codes and requirements.
- (q) In Section 11 Utilities: Delete the sentence that reads "These utilities include oil, gas, electricity, water, sewer, garbage pickup, cable, and telephone." and replace it with "These utilities include oil, gas, electricity, cable, and telephone. Landlord shall furnish all utilities for which it makes arrangements with the utility provider for service to the Premises. These services shall include water, sewer, and garbage pickup."
- (r) Each subsection of this section is intended to be independent of the other subsections of this section.

2. GRANT. Landlord hereby leases to Tenant, and Tenant accepts, the Premises, described in Section 1. The Premises are in the County of Durham, North Carolina.

3. TERM. The dates in the Term stated in Section 1 are inclusive. The Term may be terminated early or extended in accordance with this lease and in accordance with law.

4. RENT. Tenant shall pay to Landlord as rent as stated in Section 1 for the Term. Rent payments are due, in advance, without set-off, deduction, or demand on the first day of the month. Rent payments are to be payable to the Payee and sent to the address, both as indicated in Section 1.

5. RETURNED CHECKS. Tenant shall pay twenty dollars (\$20.00) for each check returned for insufficient funds or because the drawer had no account at the bank.
Lease Agreement between Raleigh Portfolio JH Retail, LLC, Landlord, and the City of Durham, Tenant, Property at 2945 S. Miami Boulevard, Durham, NC Page 5 of 5

6. COMMON AREA.

(a) Definition. The term "Common Area" is defined as all areas and facilities described in the applicable portion of Section 1 that are designated by Landlord for the non-exclusive use of Landlord, Tenant, and/or other tenants of the property and/or their respective licensees and invitees (including employees, suppliers, customers, and agents). The Common Areas are all such parking areas, streets, driveways, aisles, sidewalks, curbs, delivery passages, loading areas, lighting facilities, and all other areas situated on or in the Property which are designated by Landlord, from time to time, for use by all tenants of the Property in Common.

(b) Common Area Maintenance Costs. As used in this Lease, the term "Common Area Maintenance" shall mean all expenses of Landlord with respect to the maintenance, servicing, repairing and operation of the Property, including, but not limited to the following: maintenance, repair, and replacement costs; electricity, fuel, water, sewer, gas and other utility charges; security; exterior window washing; trash; snow and ice removal; landscaping and pest control; management fees payable to Landlord, Landlord's affiliates or third parties; wages and benefits payable to employees of Landlord whose duties are directly connected with the operation and maintenance of the Property; all services, supplies, repairs, replacement or other expenses for maintaining and operating the Property; the cost, including interest, amortized over its useful life, of any capital improvement made to the Property by Landlord after the date of this Lease which is required under any governmental law or regulation that was not applicable to the Property at the time it was constructed; the cost, including interest, amortized over its useful life, of installation of any device or other equipment which improves the operating efficiency of any system within the Premises and thereby reduces operating expenses; all other expenses which generally would be regarded as operating and maintenance expenses which would reasonably be amortized over a period not to exceed five years; This Section outlines types of services Landlord may provide and include in Common Area Maintenance. It shall not obligate Landlord to perform any service herein. The term Common Area Maintenance does not include the following: expenses for repairs, restoration or other work occasioned by fire, wind, the elements or other casualty that are covered by insurance; income and franchise taxes of Landlord; expenses incurred in leasing to or procuring of tenants, leasing commissions, advertising expenses and expenses for the renovating of space for new tenants; interest or principal payments on any mortgage or other indebtedness of Landlord; compensation paid to any employee of Landlord above the grade of property manager; any depreciation allowance or expenses; or operating expenses which are the responsibility of Tenant.

(c) Rules and Regulations. Landlord shall have the right to establish, amend, and enforce reasonable rules with respect to the Common Area. The rules imposed on Tenant shall be no more onerous or restrictive than the rules followed by any other tenant using the Common Area. Tenant agrees to comply with all such rules and to cause its licensees and invitees (including employees, suppliers, customers, and agents) to comply with them.

7. REPAIRS.

(a) Repairs on Behalf of Other Party. If Landlord makes repairs that are chargeable directly to Tenant, charges shall be added to and included as part of the rent, but shall be paid within forty-five (45) days of billing by Landlord. If Tenant makes repairs that are chargeable to Landlord, Landlord shall pay Tenant within forty-five days of receipt of written notice of charges. In case either party wishes to charge the other pursuant to this section, it shall provide all reasonable information needed to explain the repairs. This Lease does not give Tenant any authority either to obligate Landlord to pay any third party for any labor or materials or to suffer liens to be placed on the Premises.

(b) Duties to Repair. Landlord shall maintain the following if they are or become part of the Premises: roof, gutters, down spouts, structural members and components, exterior walls, exterior paint, HVAC (as specified in Section 1 (f) above), plumbing system not serving the Premises, electrical system not serving the Premises, and Common Areas and the costs of such maintenance shall be subject to Sections 1 (e) and 6. Said maintenance shall keep said items and systems in good working order and in compliance with all applicable codes, laws, and regulations. Tenant shall replace burned out light bulbs and fluorescent tubes and electrical fuses, unclog toilets and drains, if the clog is caused by matter going down the drain, repair leaking faucets, replace broken glass in interior windows, and repair damage to the Premises including damage to the walls, floor or ceiling, doors and doorways caused by Tenant and its licensees and invitees, including its employees, suppliers, customers, and agents. If Tenant notifies Landlord of the need for a repair that is Landlord's duty but Landlord neglects to make the repair, Tenant may upon ten (10) days prior written notice, but is not required to make the repair and charge Landlord for the repair.

8. USE AND CARE OF THE PREMISES. The Premises shall not be used in any way that exposes the improvements to any unreasonable risk of damage from fire. Without Landlord's consent, Tenant shall not permit or keep any gasoline, fuel oil, or other petroleum-based fuels on the Premises unless in properly constructed containers in or attached to motor vehicles or in containers approved by UL, OSHA, or another governmental body with jurisdiction over such containers. Tenant shall keep the Premises in a presentable condition, including clean of trash and garbage. Landlord shall keep the lawn, if any, mowed. Tenant shall not use or allow the use on the Premises of any "controlled substance," as that expression is used in the N. C. Controlled Substances Act, G.S. 90-86 et seq. No trees or shrubbery shall be removed without first obtaining Landlord's consent. Tenant shall not violate any lawful requirements of public authorities regarding use of the Premises, including applicable zoning and building codes. No animals may be kept on the Premises without Landlord's consent.

9. ALTERATIONS. FIXTURES. Tenant may make alterations and improvements to the Premises if they will not degrade the structural soundness of the building or violate applicable building codes. Any such work must be done in a workmanlike manner. Before the expiration of the Term, Tenant may remove from the Premises any alterations, improvements, and fixtures that Tenant may have performed or installed, whether affixed or not; provided, however, that Tenant shall repair any damage

done to the Premises by the alteration or improvement, the installation of such fixture, or by such removal. Any fixtures remaining in the Premises after the expiration of the Term shall be the property of Landlord. Any alterations and improvements to the Premises, unless removed pursuant to this section, shall inure to and be to the benefit of Landlord. If at least ninety (90) days before the end of the Term, Landlord gives notice to Tenant to remove before the end of the Term all or certain alterations, improvements, or fixtures that Tenant has performed or installed, Tenant shall comply with such notice and repair all damage done by such removal by the time that Tenant is required to relinquish possession of the Premises, ordinary wear and tear excepted.

10. KEYS. At the end of the Term, Tenant shall give to Landlord all keys that Tenant has for the Premises, including any keys made from Tenant's keys.

11. UTILITIES. Tenant shall pay all proper charges for all utilities for which it makes arrangements with the utility provider for service to the Premises. These utilities include oil, gas, electricity, water, sewer, garbage pickup, cable, and telephone.

12. LATE PAYMENTS. If the full rental payment is not received by Landlord before the twentieth (20) day after it is due, Tenant shall pay interest at the legal rate of interest as allowed by North Carolina law on the remaining unpaid balance retroactive to the date originally due until paid.

13. POSSESSION. See Section 1(b2) above.

14. ASSIGNMENT AND SUBLETTING. Tenant may neither assign nor sublet either any rights in, or any part of, the Premises without the written consent of Landlord, which shall not be unreasonably withheld. Tenant shall remain liable to Landlord under this Lease regardless of assignments or subleases.

15. ACCESS. Landlord and its agents and contractors may enter the Premises, including the interior, in case of emergency or with the consent of Tenant. Upon twenty-four hours' notice, Landlord and its agents and contractors may enter the Premises, including the interior, to inspect the same, to perform its obligations under this Lease, and to maintain any real estate of which the Premises are a part. During the last ninety (90) days of the Term and until the Premises have been rented beyond the Term or sold, Tenant shall permit Landlord to show the Premises, including the interior, to prospective tenants or purchasers, from 8:00 AM - 4:30 PM, Monday - Friday, except during holidays observed by the City of Durham. Landlord may place on the Premises for sale and for rent signs that are in compliance with law. In exercising Landlord's rights under this section, Landlord and its agents and contractors shall exercise such rights in a manner and at such times so as to minimize interference with Tenant's use and occupancy of the Premises.

16. VACATING. On vacating the Premises, Tenant shall see that all utilities are paid in full and disconnected (unless other arrangements are made with Landlord), that the Premises (including, if applicable, plumbing fixtures, stoves, refrigerators, and sinks) are clean and damage free, that the doors and windows are closed and locked, and that all

other provisions of this Lease are complied with. So that Landlord may provide security to the Premises after the Premises are vacant and may use the Premises for its purposes, Tenant shall notify Landlord in advance of the expected date that the Premises will become vacant and shall also notify Landlord within one working day after the Premises actually become vacant. The foregoing provisions of this section apply even if Tenant vacates before the end of the Term. Tenant shall surrender vacant possession of the Premises on or before the end of the Term.

17. DEFAULT. WAIVER.

(a) Default. If Tenant fails to pay the rent when due or fails to perform any other material obligation under this Lease, or if a material purported fact in Tenant's rental application is substantially false, and such failure, event, or condition continues for thirty days (but twenty days in case of rent) after notice of such failure, event, or condition is sent, then Landlord may at any time (i) terminate this Lease and cause Tenant's estate to be ceased, or (ii) terminate Tenant's right to possession of the Premises without causing Tenant's estate to be ceased or terminating this Lease. In either event, Tenant shall deliver possession of the Premises to Landlord. In addition, Landlord may reenter and take possession in accordance with legal procedures. If Landlord terminates this Lease in accordance with legal procedures. In the event of default, Tenant shall be liable to Landlord for accrued rent and accelerated rent which may become due under the Lease for the balance of the Term, damages resulting from Tenant's breach, any actual reasonable costs of re-letting the Premises including the cost of any repairs to the Premises, and any other accrued obligations and liabilities. Landlord shall use reasonable efforts to mitigate Tenant's damages.

(b) Waiver. Either party's waiver of or failure to exercise or enforce any of its rights under this Lease shall not constitute a waiver of any right thereafter. The parties' respective rights under this section are in addition to other rights under this Lease or as provided by law.

18. INDEMNIFICATION. To the maximum extent allowed by law, Tenant shall indemnify and save harmless Landlord from and against all injuries, costs, expenses, losses, penalties, and fines that are directly and solely due to the use of the Premises by Tenant or Tenant's agents or employees if the injury, cost, expense, loss, penalty, or fine is directly and solely caused by a negligent or intentional act or omission by Tenant or Tenant's agents or employees. Nonperformance under this section shall not be a default as long as Tenant is contesting its duty or the extent or nature of its duty (including the dollar amount) under this section.

19. ADA. If either party receives any notice or document (i) which alleges any violation of the Americans with Disabilities Act ("ADA") relating to the Premises, or (ii) which pertains to any claim made or threatened relating to the Premises regarding alleged noncompliance with the ADA, or (iii) which pertains to any governmental or regulatory action or investigation instituted or threatened relating to the Premises regarding alleged

noncompliance with the ADA, it shall, within ten (10) days after receipt of such notice or document, provide the other party with a copy.

20. TERMINATION, CASUALTY, AND EMINENT DOMAIN.

(a) If the Term ends early, and if Tenant has paid rent in advance, it shall be entitled to a prorata refund for the rent attributable to the time after the end of the Term.

(b) If fire or other casualty renders the Premises substantially unusable for Tenant's purposes, and if the casualty is not the fault of Tenant or any person for whose acts or omissions Tenant is liable in causing the casualty, and if Landlord cannot or does not make the Premises reasonably usable for Tenant's purposes within ninety (90) business days afterwards, Tenant may, by sending notice to Landlord within ninety-five (95) business days of the casualty, terminate the Term effective as of the date of the casualty.

(c) If fire or other casualty substantially damages the Premises, and if the casualty is not the fault of Tenant or any person for whose acts or omissions Tenant is liable in causing the casualty, and if Landlord cannot or does not substantially repair the Premises within ninety (90) business days afterwards, Tenant may, by sending notice to Landlord within ninety-five (95) business days of the casualty, terminate the Term effective as of the date of the casualty.

(d) If fire or other casualty renders the Premises substantially unusable for Tenant's purposes, and if Landlord cannot in the exercise of reasonable diligence make the Premises reasonably usable for Tenant's purposes within ninety (90) business days afterwards, Landlord may, by sending notice to Tenant within ninety-five (95) business days of the casualty, terminate the Term effective as of the date of the casualty.

(e) If fire or other casualty renders the Premises substantially unusable for Tenant's purposes, and, in Landlord's reasonable opinion, Landlord can in the exercise of reasonable diligence make the Premises reasonably usable for Tenant's purposes within ninety (90) business days afterwards, and if Landlord's casualty insurance carrier has agreed to provide insurance funds for such repairs, it is agreed that Landlord shall repair the Premises within said ninety (90) business day period to the equivalent condition of the Premises existing before said casualty; provided, however, that the rent during the period before such repairs have been completed shall be reduced to an amount which bears the same ratio to the rent provided for as the portion of the Premises then available for use bears to the entire Premises, and upon completion of such repair the rent shall thereafter be paid by Tenant at the same rate as though the casualty had not occurred.

(f) If an authority with the power of eminent domain acquires an interest in the Premises that substantially affects their use for Tenant's purposes, Tenant may, by sending notice to Landlord within thirty (30) days of the taking of possession by the authority, terminate the Term effective as of the date Tenant surrenders the Premises to Landlord. If any portion of the Premises (other than Tenant's trade fixtures, furniture, other

personal property or Tenant's leasehold interest) shall be taken by the exercise of the power of eminent domain or sold to the holder of such power pursuant to a threatened taking or made unfit or unavailable for Tenant's purposes by other governmental action, including zoning and building code orders, the Term of this Lease shall terminate upon such taking, completion of sale, or governmental order. Tenant shall not be entitled to any part of the condemnation award or purchase price; provided, however, nothing herein precludes Tenant from prosecuting any claim directly against the condemning authority in such condemnation proceeding for loss of business, or depreciation to, damage to, or costs of removal of or for the value of Tenant's trade fixtures, furniture, other personal property or Tenant's leasehold interest.

(g) If Tenant has reasonable concerns about mold, mildew, or other condition that it deems to be potentially hazardous to humans, on or in the Premises, Tenant may send notice to Landlord describing Tenant's concerns with reasonable specificity. If Landlord does not cure or attempt to cure the situation to Tenant's reasonable satisfaction within 60 business days after the notice was sent, the Tenant may terminate effective 10 business days after sending Landlord notice of termination.

(h) Each subsection of this section is intended to be independent of the other subsections of this section.

21. MORTGAGEE'S RIGHTS. Tenant agrees, at any time from time to time during the Term, within fifteen (15) days of Landlord's request, to deliver to Landlord the following: an executed and acknowledged instrument amending this Lease in such respects as may be required by any mortgagee, trustee, or beneficiary under any mortgage, deed of trust, prospective mortgage, or prospective deed of trust, provided that any such amendment shall not alter or impair any of Tenant's obligations, rights, and remedies. Upon Landlord's request, Tenant will execute from time to time during the Term such instruments which may be necessary or convenient to subordinate the rights of Tenant hereunder to any mortgage, deed of trust, or other encumbrance executed by Landlord, provided that such instrument does not alter or impair any of Tenant's obligations, rights, and remedies, whether or not a foreclosure occurs.

22. BANKRUPTCY OR INSOLVENCY: If any proceedings in bankruptcy or insolvency are filed against Tenant or if any writ of attachment or writ of execution is levied upon the interest herein of Tenant and such proceedings or levy shall not be released or dismissed within sixty (60) days thereafter, or if any sale of the leasehold interest hereby created or any part thereof should be made under any execution or other judicial process, or if Tenant shall make any assignment for the benefit of creditors or shall voluntarily institute bankruptcy or insolvency proceedings, Landlord may terminate the Term of this Lease.

23. INSURANCE.

(a) Duty to Maintain Insurance; Waiver of Subrogation. Landlord shall maintain fire and extended coverage insurance on the building in which the Premises are located in an amount equal to the replacement cost of the building, and provide a certificate of insurance

to Tenant's Risk Manager by mailing it to Tenant's address as provided in Section 1. The parties mutually release and discharge each other from all claims and liabilities arising from or caused by any casualty or hazard to the extent that the loss caused by the casualty or hazard is covered by insurance, provided that such release shall not operate in any case where the effect is to invalidate such insurance coverage.

(b) **Liability Risk:** Landlord shall purchase liability insurance as follows: commercial general liability \$500,000 combined single limits and shall provide certificate of insurance to Tenant's Risk Manager by mailing it to Tenant's address as provided in Section 1. Tenant shall purchase liability insurance, applicable to use and occupancy of the Premises as follows: commercial general liability, \$1,000,000 combined single limits applicable to Tenant's use and occupancy of the Premises; \$1,000,000 umbrella liability insurance. Landlord shall be named additional insured as his interest may appear. Tenant shall provide certificate of insurance to Landlord by mailing it to Landlord's address as provided in Section 1.

24. EFFECTS ON OTHER RIGHTS. Nothing in this Lease shall limit the City of Durham's governmental powers regarding the Premises, including eminent domain, zoning, subdivision, and police.

25. COVENANTS. Landlord warrants that Landlord has title to the Premises, the right to lease the Premises to Tenant, and that for as long as Tenant is not in default under this Lease after notice and the opportunity to cure, Tenant shall have peaceable possession and quiet enjoyment of the Premises for the Term. Without limiting Tenant's rights in accordance with law or this Lease, it is agreed that rent shall be abated for any period during which Tenant cannot occupy the Premises due to Landlord's breach of the covenants in the preceding sentence.

26. MEMORANDUM. At either party's request, the other party shall execute and deliver a memorandum of this Lease in the form reasonably requested by the requesting party and as prepared by the requesting party.

27. ADDRESSES. NOTICES. Notices and requests to Tenant or Landlord shall be in writing and sent to it at Landlord's address or Tenant's address, respectively shown in Section 1. By sending a notice stating its new address, either party may change the address to which notices, requests, and rent shall be sent. Notices and requests shall be sent by any of the following: hand delivery, U.S. Postal Service, Federal Express, or UPS. In addition, all notices and requests shall be sent by fax. If the required notice is less than 9 days, the party shall also make reasonable attempts, promptly after giving written, to use the telephone to communicate the contents of the written notice.

28. FORUM AND CHOICE OF LAW. This Lease shall be deemed made in North Carolina. This Lease shall be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this Lease shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall

not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

29. INTERPRETATION. Unless the context requires otherwise, the singular includes the plural, and vice versa. "Including" and "included" mean including or included but not limited to. Section headings are not for interpretation of this Lease. If any provision of this Lease shall be determined to be invalid or unenforceable in whole or in part, for any reason, such invalidity or unenforceability shall not affect the validity or enforceability of any of the remaining provisions and such invalid or unenforceable provision shall be revised so that it will be valid and enforceable to the maximum extent legally possible consistent with its intent.

30. CITY POLICY. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date written above.

CITY OF DURHAM

ATTEST:

Clerk

By: _____
City Manager

LANDLORD:

RALEIGH PORTFOLIO JH RETAIL, LLC,
Acting through its authorized agent,
BPG Management Company-NC, LLC

By: _____
President

State of _____

ACKNOWLEDGMENT BY
LIMITED LIABILITY COMPANY

County of _____

I, a notary public in and for said county and state, certify that

_____ personally (1) appeared before me this day,
(2) stated that he or she is a manager of Raleigh Portfolio JH Retail, LLC, a limited liability company organized and existing under the laws of the State of North Carolina, (3) acknowledged that the foregoing agreement with the City of Durham carries on the company's business in the usual way, and (4) acknowledged the due execution, under seal, of the contract on behalf of the company. This the _____ day of _____, 2012.

My commission expires:

Notary Public
